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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,281	03/23/2006	Sven Erik Hedberg	P06,0085	9434

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SCHIFF HARDIN, LLP
PATENT DEPARTMENT
6600 SEARS TOWER
CHICAGO, IL 60606-6473

EXAMINER

GEDEON, BRIAN T

ART UNIT	PAPER NUMBER
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3766

MAIL DATE	DELIVERY MODE
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06/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/573,281

Applicant(s)

HEDBERG ET AL.

Examiner

Brian T. Gedeon

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/23/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/23/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Specifically, the oath/declaration do not have the correct statement with respect to the duty to disclose.

CORRECT STATEMENTS should read:

- "I acknowledge the duty to disclose information which is material to patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56."

INCORRECT STATEMENTS:

- "I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations Section 1.56(a)"
- "I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56(a)"
- "I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations Section 1.56"

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 5, 6, 10, and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Bradley et al. (US Patent no. 6,915,164).

In regard to claim 5 and 10, Bradley et al. disclose a device for biventricular stimulation therapy, col 1 lines 14-20. The device of Bradley et al. has a pulse generator 72 for stimulation of the ventricles. A microcontroller 60 sends control signals to the ventricular pulse generator 72 to trigger or inhibit application of stimulation pulses, col 7 lines 30-45. The microcontroller 60 includes circuitry for controlling the timing of stimulation pulses, e.g., the ventricular chamber delay (VV interval), as well as for keeping track of evoked response windows, col 7 lines 46-53. Independent sense amplifiers for the right and left sides of the heart may detect evoked response signals in order to verify that that each chamber of the heart has been successfully captured, col 8 line 66 – col 9 line 8 and col 9 lines 17-23. Figure 4 of Bradley et al. depicts an algorithm in which stimulation pulses are applied to the heart, on either the right or left side, and then a detector 65 searches for an evoked response during an evoked response window, col 11 line 53 – col 12 line 4. The search for an evoked response occurs following delivery of a stimulation pulse to a first chamber. Adjustments can be

made to inter-chamber delays (i.e., VV interval) so that premature depolarization of the second chamber would be prevented thereby avoiding erroneous capture and threshold test results, col 13 lines 8-23. Finally, Bradley et al. avoid applying a stimulation pulse during the evoked response window in order to prevent erroneous capture and threshold test results, therefore it can be implied that the evoked response window is closed when a stimulation pulse is applied to the second chamber, col 14 lines 18-23.

In regard to claims 6 and 11, ventricular sensing circuit 84 are connected to the microcontroller 60 for effectively triggering or inhibiting ventricular pulse generator 72 in response to the absence or presence of cardiac activity in either of the chambers of the heart, col 8 lines 23-28.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7-9 and 12-14 rejected under 35 U.S.C. 103(a) as being unpatentable over Bradley et al. (US Patent no. 6,915,164).

In regard to claims 7-9 and 12-14, Bradley et al. teach of adjustable inter-chamber delays, however does not disclose any specific time ranges, col 13 lines 8-25. It would have been obvious to one of ordinary skill in the art at the time the invention was made disclose a desired range of times for inter-chamber delay, since it has been held that where the general working conditions of a claim are disclosed in the prior art,

discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 223.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Gedeon whose telephone number is (571) 272-3447. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit 3766

Angela D. Sykes
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BTG

Kristen Drosch Mullen
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